IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8827 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONIBEN M DHUMADIA

Versus

GARRISON ENGINEER(P)

Appearance:

MR SHALIN MEHTA for Petitioners

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/08/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner.

#. The petitioners, in this writ petition under Article 226 of the Constitution of India, are praying for grant

of following reliefs:

(A) declaring the action of the respondents in not making payment of compensation as arbitrary, capricious, illegal, and null and void.

(B) directing the respondents to make the payment of Rs.3 lacs towards the compensation with interest at the market rate from the date of death of petitioner No.1's husband, i.e. 13.7.85.

(C) declaring the action of the respondents in not giving employment to the son of the petitioner No.1, i.e., the petitioner No.2 and quashing and setting side the order at Annex.E dated 4.7.89.

(D) directing the respondents to reconsider the case of the petitioner for suitable employment and give him suitable job in the office of the respondent No.1 or the respondent No.2; and

(E) directing the respondents to consider the case of the petitioner No.2 for suitable employment and give him suitable job in the office of the respondent No.1 or respondent No.2....

#. The petitioners have come up with the case that the husband of petitioner No.1 and father of petitioner No.2 was in service of respondent No.1 as peon-cum-safaiwala. On 13th July 1985 he was coming from Gandhinagar to Ahmedabad in the military van, i.e. van of the office along with 35 to 40 other employees. Near Valad,accident took place as a result of loss of control by driver of the vehicle, the van fell down having number of turns and as a result many persons died and many were injured. The husband of petitioner No.1 and father of petitioner No.2 died as a result of this motor vehicle accident. The accident took place because of negligence of the driver of the vehicle and it was obligatory upon the respondents to see that the employees who have died and who have got injuries are compensated. The petitioners are entitled to claim compensation and other benefits arising out of unfortunate event. The petitioner No.1 met Major D'Souza under whom her husband was working and she was told that everything would be alright. She will be given compensation and her son, petitioner No.2 will also be given employment in place of her husband. She again approached to that person and she was again promised that everything would be done. She was advised not to file any case against the office for two reasons, first that she has also been working with the office and second that if she would file a case, she would lose sympathy and she

would not be granted compensation and her son would also not be given job. Thereafter, she also approached the officers and gave many applications for compensation and for job of her son. Reference has been made to the letter of respondent No.1 dated 9.1.86 wherein she was advised to get the name of her son registered with employment exchange so that on completion of 18 years' of age, he can be appointed in lieu of deceased. The petitioner No.2 attained majority on 30th June 1988. She approached the respondents-officers from time to time for compensation. Even it is stated by petitioner that Major D'Souza, at the time of his transfer had promised that something would be done and she would be given compensation. So far employment of petitioner No.1's son is concerned, it was not accepted by the Engineer in Chief, Army Headquarters, New Delhi, and this has been intimated to the petitioner vide annexure-E. Hence this petition before this court.

#. Reply to the special civil application has been filed by respondent No.1 to which rejoinder has been filed by petitioners No.1 and 2. However, nobody is present on behalf of respondents. I have gone through the reply and the rejoinder also. In the reply, the respondent No.1 has raised objection that the petition suffers from delay, latches and acquiescence. The petition has not been filed with bonafide intention but with an ulterior motive. It is a case where the petitioners are praying for money decree of rupees three lacs towards compensation for the death of husband of petitioner No.1 and father of petitioner No.2 and it may not be granted under Article 226 of the Constitution of India as the question of award of compensation involves disputed question of fact and it is not appropriate or proper forum for adjudication thereof. It is stated that the petitioner should have filed the Motor Accident Claims Petition and which is not admittedly filed. So far the claim of the petitioner, re.: compassionate appointment is concerned, it is stated that no such appointment can be given as the petitioner No.1 is serving under respondent No.2 for the last 20 years. As the petitioner No.1 is already in job the request made for giving compassionate appointment to petitioner No.2 has rightly been rejected by Engineer-in-Chief, Army Headquarters, New Delhi. The respondent No.1 has come up with the case that the deceased was travelling in three ton vehicle of 2-Kumaon Regiment and the said vehicle was detailed by Headquarter-85 Regiment Inf.Brigade to perform station duties from Gandhinagar Cantonment Railway Station to Ahmedabad and to go back. The deceased was not authorized to travel in the said vehicle. The vehicle

does not belong to respondent No.1. Whatever other claim of the petitioner regarding the service benefits of the deceased concerned are there, the same have been paid. The so-called pleadings made by the petitioner, re.: promises which were given by Major D'Souza are denied.

#. It is not in dispute that the petitioner No.1 is serving under respondent No.2 for the last 20 years. The petitioner No.1, on the date on which her husband died in accident, was in employment of respondent no.2. The learned counsel for the petitioner has failed to point out any Rule, regulation which provides for giving compassionate appointment to the dependant of the employee who died in accident. Compassionate appointment is not as a matter of course or right. The object and purpose of compassionate appointment is to give succor to the family to tide over the sudden financial crises befallen on the dependents on account of untimely demise of its sole earning member. Reference here may have to the decision of the apex court in the case of Haryana State Electricity Board v. Hakim Singh reported in 1997(8) SCC 85. In the case of Umeshkumar Nagpal v. State of Haryana, reported in 1994 SCC 138, their Lordships, Supreme Court, observed, "the whole object of granting compassionate employment is to enable the family to tide over sudden crises. The object is not to give a member of such family a post much less a post for the post held by deceased". In the case of Jagdish Prasad v. State of Bihar, reported in 1996(1) SCC 301 , their Lordships, Supreme Court observed, "the very object of appointment of the dependent of deceased employee who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family". In this case, it is not the case where because of demise of the father of petitioner No.2 and husband of petitioner No.1, the family had faced any sudden financial crises. Admittedly, the petitioner No.1 was in employment of respondent No.2. In the facts of this case, if the claim for compassionate appointment is to be countenanced, it would amount to another mode of recruitment of the dependent of the deceased Government servant which cannot be encouraged, dehors the recruitment rules and constitutional provisions as contained in Article 14 & 16 of the Constitution of India. In fact, this appointment has been claimed by petitioner as of right or course. Though appointments which have been given to the dependents of deceased employee who died while in service for fulfilling the object and purpose for which the same are provided, are dehors the provisions of Articles 14 & 16 of the Constitution, but these are taken to be

exception keeping in view the socioeconomic approach. Even if it is taken that Major D'souza, who is not a party to this petition, assured the petitioner No.1 that on attaining the age of majority by petitioner No.2, the later will be given compassionate appointment, how it is binding on the Union of India. Major D'Souza was not the appointing authority. The appointing authority, as per the reply to the special civil application, was Engineer-in-Chief, Army Headquarters at New Delhi and this claim of petitioners for compassionate appointment has not been accepted by it. The petitioners though prayed for quashing and setting aside the order annexure-E dated 4.7.89, they have failed to show any illegality whatsoever therein. The Engineer-in-Chief, Army Headquarters, New Delhi, the author of the order dated 4.7.89, is not a party to this petition also. In the absence of that officer as a party, otherwise also, it is difficult to quash and set aside this order. In the absence of the appointing authority as a party to this petition, how such a relief can be granted giving directions to it to consider the case of petitioner No.2 for compassionate appointment, leaving apart all other aspects. This claim of petitioners is not tenable. If the directions are given to the appointing authority to consider the case of petitioner No.2 for compassionate appointment, it will be contrary to the very basis object and purpose for which these compassionate appointments are being provided and given to the dependents of the deceased who died while in service. The claim of petitioner No.2 for compassionate appointment is wholly misconceived and cannot be accepted.

#. So far as the claim for compensation for rupees three lacs with interest is concerned, it is untenable in these proceedings. I find sufficient merits in the averments made in the reply that for deciding this claim, the court has to decide many disputed questions of facts. The remedy for this claim would have been to the petitioners to file Motor Accident Claims Petition. For this claim, the petitioners are to establish to the satisfaction of the Motor Accident Claims Tribunal that the death was as a result of rash and negligent driving of the vehicle and for this, the Union of India is vicariously liable to pay the compensation. In tort there may be vicarious liability of sovereign in the given case but for which remedy is only of filing of the Motor Accident Claims Petition and not this petition under Article 226 of the Constitution of India. This court cannot go on and decide the disputed questions of fact. Here also, the respondents denied that the petitioners could have been legally entitled for compensation. Plea of delay and

latches has also been taken and this is certainly relevant so far it relates to claim of petitioners for grant of compensation. Limitation for filing of Motor Accident Claims Petition was prescribed under the Motor Vehicles Act, 1939 as it was applicable at the relevant time and this petition for this claim certainly suffers from the vice of delay and latches. The accident has taken place on 13th July 1985 and this petition has been filed by petitioners on 26th December, 1989. I find some force in this plea of respondent No.1 that this petition is filed with malafide and ulterior motive. When the petition for compensation has not been filed by petitioner before the Motor Accident Claims Tribunal within limitation, possibly, this petition has been filed to overcome this plea of limitation. The justification given by petitioners for non filing the case before Tribunal that Major D'Souza assured them that in case this claim has been filed, the petitioner No.1 would lose sympathy and she may not be granted compensation and her son would not also be given job, is wholly untenable for two reasons. Firstly, Major D'Souza is not a party her and behind the his back, it is difficult to believe what it is stated by the petitioners. Secondly, even if Major D'Souza had given such promises, how it is binding on the other respondents and more so on the Union of India. As a result of aforesaid discussion, this writ petition fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. As none present for respondents, no order as to cots.

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(sunil)